2396.

SUPREME COURT OF THE UNITED STATES.

No. 136.

SAUNDERS BURGESS, PLAINTIFF IN ERROR,

vs.

JOHN M. GRAY ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

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[GIDEON, Print.]

MISSOURI DISTRICT, *sct.*

The President of the United States, to the honorable the judges of supreme court of the State of Missouri, greeting:

Because in the record and proceedings, and also in the rendition of a judgment of a plea in said supreme court, between Sanders Burgess, plaintiff or appellant, and Thomas Burgess, jr., Aaron Burgess, John M. Gray, Simeon Burgess, James Burgess, jr., Samuel T. Northcut, alias Northcraft, Silas Husky, Aaron A. Smix, George Arnold, Austin M. Johnson, George W. Ogden, John C. Harrington, John Watson, Lewis Bush, and James G. Cromme, defendants or appellees, a manifest error hath happened to the great damage of said plaintiff as by his complaint appears. We being willing that error, if any, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if any judgment be therein given, that then, under your seal, you distinctly and openly send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, so that you have the same, together with this writ, before the chief justice and associate justices of said Supreme court, on the first Monday of December next, at the city of Washington, the present seat of the National Government, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done. Witness the honorable Roger B. Taney, chief justice of the Supreme Court, the 11th day of October, in the year of our Lord one thousand eight hundred and fifty-two; issued at office in the city of St. Louis, under the seal of the circuit court of the United States for the district of Missouri, the day and year last aforesaid.

BEN. F. HICKMAN,
Clerk cir. ct. U. S., Mo. dist.

Allowed by me.

H. R. GAMBLE,
P. J., Supreme court, Mo.

THE STATE OF MISSOURI, *ss.*

I, William S. Glanville, clerk of the supreme court of the State of Missouri, at Saint Louis, in obedience to the commands of this writ, do herewith transmit to the Supreme Court of the United States, at Washington, the seat of the General Government of said United States, a full, true, and perfect transcript of the record and proceedings had in our said supreme court in the case of Sanders, plaintiff, against John M.

Gray and others, defendants, as fully as the same remain of record and on file in my office.

Witness my hand and the seal of said supreme court, at
[L. S.] Saint Louis, at office, this third day of November, anno eighteen hundred and fifty-two.

WILLIAM S. GLANVILLE.
Clerk supreme court of Mo., at St. Louis.

THE STATE OF MISSOURI, *ss.*

Be it remembered, that heretofore, to wit, on the fifth day of February, anno eighteen hundred and fifty-one, there was filed in the office of the clerk of the supreme court of the State of Missouri, at Saint Louis, on appeal from the circuit court of the county of Jefferson, in the ninth judicial circuit, in said State of Missouri, a transcript of the record and proceedings in a certain case, to wit, the case of Saunders Burgess, appellant, against John M. Gray and others, respondents, in the words and figures following, to wit:

SAUNDERS BURGESS, plaintiff,
against
THOMAS BURGESS, jr., Aaron Burgess, John M. Gray, Simeon Burgess, James Burgess, jr., Samuel T. Northcut, alias Northcraft, Silas Husky, Aaron A. Smirl, George Arnold, Austin M. Johnston, George W. Ogden, John C. Harrington, John Watson, Lewis Bush, and James G. Cromme, defendants.

In the circuit court of Jefferson county.

To the honorable John H. Stone, judge of the Jefferson circuit court, for the county and State aforesaid.

Your petitioner, Saunders Burgess, humbly and respectfully showeth unto your honor, that he is a citizen of said county of Jefferson, and State aforesaid, and that one John Jarrott, alias Gerrard, settled under the Spanish Government upon a tract of land containing sixteen hundred arpens, in the year of our Lord one thousand seven hundred and eighty, on the west bank of the Mississippi river, including the mouth of the Grand Glaize creek, in what was then called Upper Louisiana territory, in St. Louis county formerly, now said Jefferson county, and State of Missouri; that said Garrott made said settlement under permission, and by express authority, of said Spanish Government, in whom the title of said land then belonged, and under express promise from said government, that if he would make said settlement on said land, and continue to inhabit it and cultivate it, that it should forever belong to him and his legal representatives; that it should be his property, free from the claim of said Spanish Government for-

ever; and that relying on said promise, he made said settlement and improvement, and built his house, which was near the mouth of said Grand Glaize creek, from said year of seventeen hundred and eighty, continually from year to year, without ever leaving said land, or ceasing to inhabit it or cultivate it, down until about the year seventeen hundred and ninety-six, about sixteen consecutive years, when and at said last mentioned period of time he, said John Jarrott, and his family were driven off of said land by the Osage Indians; after which he, the said John Jarrott, and his family had to seek shelter and protection from the murdering spirit of said Indians, in the town of St. Genevieve, in said Upper Louisiana, now State of Missouri; and to live in said town of St. Genevieve until he, said John Jarrott, died, which was a few years after being drove off said land as aforesaid; and left at his said death one son and heir, by the name of Joseph Jarrott, alias Joseph Garrard; after the death of said John Jarrott, the said father, the said Joseph Jarrott, the son and heir, after the dangerous times of the Indians ceased, called on the officers of the said Spanish Government, who had authority, located in the town of St. Louis, now city of St. Louis, in said Upper Louisiana territory, now in said State of Missouri, to know if said land, settled upon by his said father as aforesaid, was not his, as heir to his said father; at which time and place he was told by them that it was by the laws of the Spanish Government, and to go and take possession of it, and live on it and settle it, or claim it and have it for his own. Upon being told this by the proper authority he, the said Joseph Jarrott, alias Joseph Garrard, immediately settled upon it, and inhabited it and cultivated it for several years, consecutively, in his own right as his own property, as heir to his said father, free from the hinderance or molestation of any one claiming it adversely to him, or any part thereof, until the year of our Lord eighteen hundred and twelve, when and at which time he, the said Joseph Jarrott, sold and conveyed said tract of land, as heir as aforesaid, to one Jeduthan Kendall, by deed bearing date as aforesaid, and here shown, marked with the letter A, and made part of this petition; the said Kendall then took possession of said tract of land, and continued to hold the possession of it until his death, which was after the year *eighteen* hundred and ninety-three. Your petitioner here shows, that after said Kendall purchased said land as aforesaid, he, under the acts of Congress of the United States then in force, gave notice to Frederick Bates, recorder of land claims in and for the Territory of Missouri, now State of Missouri, of his claim to said tract of land purchased as aforesaid, and introduced proof before said Bates as to the length of time the said John Jarrott lived on said land, and to his inhabitation and cultivation of the same, with the view of getting said tract of land confirmed by him, in pursuance and according to the several acts of the Congress of the United States, which said tract of land was not confirmed by the said Bates; a certified copy of said notice, proof made and refusal to confirm said land is here shown, marked with the letter B, and made part of this petition. Your petitioner further represents,

that after the year eighteen hundred and thirty-three, the said Jeduthan Kendall took sick and died, and that the title to said tract of land descended to his heirs, to wit: Margaret Kendal, Alton Kendal, Keziah Kendal, Olive Kendal, and Berthiah Kendal, which said last mentioned heirs then sold and conveyed to your petitioner six hundred and forty acres of said tract of land, by deeds bearing date the tenth day of May, eighteen hundred and thirty-seven, and twelfth day of February, eighteen hundred and forty-seven, which deeds are here shown, marked with the letters C and D, and made part of this petition, including and contiguous to the mouth of said Grand Glaize creek *creek*, except a small piece before then sold and conveyed by said Alton J. Kendall to one James Burgess, by deed bearing date the ninth day of May, eighteen hundred and thirty-six, which last mentioned deed is here shown, marked with the letter E, and made part of this petition; and said last mentioned piece or interest in said tract of land, sold as aforesaid, has been since sold and conveyed by said James Burgess and wife to your petitioner, by deed bearing date the sixteenth day of February, eighteen hundred and thirty-nine, which last mentioned deed is here shown, marked with the letter F, and made part of this petition; which gives to your petitioner a complete and perfect title to six hundred and forty acres of said tract of land, containing sixteen hundred arpens, lying on the said Grand Glaize creek as aforesaid; and your petitioner has been in possession of six hundred and forty acres of — land ever since he purchased it as aforesaid. Your petitioner here represents, that in pursuance of the act of the Congress of the United States, the surveyor general for the State of Missouri and Illinois, one William Milburn, laid down a map of said sixteen hundred arpens of land to satisfy said claim of John Jarrott, and did have said land surveyed, as surveyor general; and did, on the twenty-first day of April, eighteen hundred and twenty-one, have a map of said land laid down on the books, in the register's office, for the sale of the public lands in the said State of Missouri; that the same, in pursuance of said acts of Congress, might be respected and kept from sale by said register, but to be kept sacredly to fill and satisfy said claim of John Jarrott, in the said city of St. Louis, for the said sixteen hundred arpens of land; a certified copy of said map, from the said register's office, is here shown, marked with the letter G, and made part of this petition; said map of said sixteen hundred arpens of land is included within the dotted lines, as exhibited on said map, marked with the letter G as aforesaid. Your petitioner here states, that said tract of sixteen hundred arpens of land was kept from sale, pre-emptions, or entry, as laid down in compliance with said several acts of the Congress of the United States to satisfy said claim of said John Jarrot's legal representatives, until the thirtieth day of December, eighteen hundred and forty-seven, a period of twenty-nine or thirty years, when, in violation of law, the several acts of the Congress of the United States, and the rights of the legal representatives of the said John Jarrott, the register for the sale of the public lands in the said city of St. Louis, and for the State of Missouri,

suffered pre-emptions to be taken of said land, under the act of Congress of the United States, passed in eighteen hundred and forty-one, for nearly all of said tract of sixteen hundred arpens of land, reserved from sale as aforesaid to satisfy said claim, and the persons who took said pre-emptions had full knowledge at the time of the claim of John Jarrott's legal representatives to said land, and now having possession of said land, and claiming the same as their property, although attempted to be unlawfully obtained, and are keeping the legal representatives of the said John Jarrot out of the possession of the same, notwithstanding it is their property, and belongs to no other persons whatsoever. The persons permitted to take said pre-emptions, as aforesaid, are as follows, to wit: Thomas Burgess, jun'r, of said Jefferson county, took a pre-emption the thirtieth day of December, eighteen hundred and forty-seven, on said land, for the north fractional half, north of survey number two thousand nine hundred and ninety-six, in section thirty-two, township forty-two, range six east, for thirty-seven acres and twenty hundredths of an acre, and the number of the receipt and certicate is sixteen thousand five hundred and seventy. Aaron N. Burgess, of said county, took a pre-emption for the southeast fractional one-fourth of section twenty, township forty-two, range six east, for one hundred and ten acres and fifty-one hundredths of an acre, on the nineteenth day of January eighteen hundred and forty-eight, and the number of receipt and certificate is sixteen thousand six hundred and seven; Simeon Burgess, of said county, took a pre-emption for the southeast fractional one-fourth of section twenty-nine, township forty-two, range six east, for sixty-six acres and two-hundredths of an acre, March the sixteenth, eighteen hundred and forty-eight, and number of receipt and certificate is sixteen thousand seven hundred and seventy-nine; John M. Gray, of said county, took a pre-emption for the southwest fractional one-fourth of section twenty-nine, township forty, range six east, for seventy-seven acres and fifty-five one-hundredths of an acre, May twenty-second, eighteen hundred and forty-eight, and number of receipt and certificate is sixteen thousand eight hundred and eighty-nine; James Burgess, jr., of said county, took a pre-emption for the south fractional one-half of section thirty-two, township forty-two, range six east, for one hundred and fifty-six acres and sixteen hundredths of an acre, June the tenth, eighteen hundred and forty-eight, and number of receipt and certificate is sixteen thousand nine hundred and thirty-five; Samuel T. Northcut, alias Northcraft, of said county, took a pre-emption for the southwest fractional one-fourth of section twenty, township forty-two, range six east, for one hundred and twenty-nine acres and twenty-six hundredths of an acre, June the fifteenth, eighteen hundred and forty-eight, and is number of receipt and certificate sixteen thousand nine hundred and forty-two; Silas Husky, of said county, took a pre-emption for the northeast fractional one-fourth of section twenty-nine, township forty-two, range six east, on the twenty-fourth of June, eighteen hundred and forty-eight, for one hundred acres and nine hundredths of an acre, and is number of receipt

and certificate sixteen thousand nine hundred and fifty-nine; Aaron A. Smith, of said county, took a pre-emption for the northeast fractional fourth of section nineteen, township forty-two, range six east, for eighty-five acres and nineteen hundredths of an acre, June twenty-seventh, eighteen hundred and forty-eight, and number of receipt and certificate is sixteen thousand *and* nine hundred and sixty-eight; George Arnold, of said county, took a pre-emption on the southwest one-fourth of southwest one-fourth section eighteen, and north one-half of the northwest fractional one-fourth of section nineteen, in township forty-two, range six east, for eighty acres and thirty-nine hundredths of an acre, on the twenty-seventh day of June, eighteen hundred and forty-eight, and the number of receipt and certificate is sixteen thousand nine hundred and seventy-two; Austin M. Johnston, of said county, took a pre-emption on the south fractional part of section eighteen, township forty-two, range six east, for fifty-two acres and seventy-three hundredths of an acre, June twenty-ninth, eighteen hundred and forty-eight, and number of receipt and certificate is sixteen thousand nine hundred and eighty-four; George W. Ogden, of said county, took a pre-emption on the southeast fractional fourth of section nineteen, township forty-two, range six east, for one hundred and twenty-five acres and sixty-nine hundredths of an acre, the sixth of July, eighteen hundred and forty-eight, and number of receipt and certificate is sixteen thousand nine hundred and ninety-three; John C. Herrington, of said county, took a pre-emption on the northwest fractional one-fourth of section thirty, township forty-two, range six east, for fifty acres and eighty-five one-hundredths of an acre, April twentieth, eighteen hundred and forty-nine, and number of receipt and certificate is seventeen thousand four hundred and forty-five; and the said Aaron N. Burgess and the said Aaron A. Smith have received patents from the Government of the United States for what they claim; by which map of said land, here exhibited from the said register's office, for said sixteen hundred arpens of land, marked with the letter (H) and made part of this petition, it will be seen that all of that tract of land reserved to satisfy said claim is now held adversely to the claim of said John Jarrott's legal representatives, except a small fraction in the southwestern corner of said tract of land, containing ninety-eight acres and fourteen hundredths of an acre, and one including the mouth of said creek for sixty-four acres and fifty-two hundredths; and that there has been an effort made, on the part of the officers of the United States Government and the persons aforesaid, to wrong the legal representatives of said John Jarrott out of their land, of which representatives your petitioner is one, and legally entitled by his contracts of purchase in this petition exhibited, and by the laws of the United States Government, particularly the act of Congress of the United States giving to settlers on public lands in Upper Louisiana territory, not exceeding two thousand acres, who had lived upon said land for ten consecutive years previous to the year 1803; and the proof he is able to make, and has herein exhibited in this petition, to six hundred and forty acres of said tract of land, including and surround-

ing the mouth of said Grand Glaize creek, where it empties into the said Mississippi river, free from the claim, hinderance, or molestation of the Government of the United States, or any other person whatsoever. He, therefore, for the purpose of establishing his title to said land by law, against the illegal steps taken by said officers and said persons, *he* brings this suit and files this petition, with his monuments of title, and prays that the following named persons may be made defendants to this his suit by petition, to wit, and prays for process to issue against them according to law: The said Thomas Burgess, jr., Aaron Burgess, Simeon Burgess, John M. Gray, James Burgess, jr., Samuel T. Northcut, alias Northcraft, Silas Husky, Aaron A. Smirl, George Arnold, Austin M. Johnston, George W. Ogden, and John C. Herrington; and also against the following named persons, who are now in —— some of said land, and claim title to some part thereof, one John Watson, Lewis Bush, and James G. Crowe; and that said defendants be, by verdict and judgment in your petitioner's behalf, compelled to abandon their illegal claim to said land, or any part of it, to wit, your petitioner's six hundred and forty acres of it; and your petitioner will ever pray, &c.

SAUNDERS BURGESS,
By JOHN B. KING,
His attorney.

Saunders Burgess, plaintiff in the foregoing and annexed petition, makes oath and says, he believes the above petition and the matters as therein *as* stated are true.

SAUNDERS BURGESS.

Sworn to and subscribed before me, this 13th day of May, 1850.
J. G. CROWE, *J. P.*

COUNTY OF JEFFERSON, *ss.*

The State of Missouri, to the sheriff of the county of Jefferson, greeting:

You are hereby commanded that you summon Thomas Burgess, jr., Aaron Burgess, John M. Gray, Simeon Burgess, James Burgess, jr., Samuel T. Northcut, alias Northcraft, Silas Husky, Aaron A. Smirl, George Arnold, Austin M. Johnston, George W. Ogden, John C. Herrington, John Watson, Lewis Bush, and James G. Crowe, if they be found in your bailiwick, that they be and appear before the honorable judge of our circuit court, on the first day of the next term thereof, to be begun and held at the town of Hillsboro', within and for said county of Jefferson, on the fourth Monday of May, A. D. 1850, then and there to answer unto Saunders Burgess upon his original petition, a copy whereof is hereto annexed; and have you then there this writ.

Witness Thomas C. Fletcher, clerk of our said circuit court, with the seal thereof hereto affixed, at office in Hillsboro', this 14th [SEAL.] day of May, A. D. 1850.

THOS. C. FLETCHER, *Clerk.*

Endorsed—Return.

I executed this writ on Thomas Burgess, jr., Simeon Burgess, Aaron Burgess, John Watson, James G. Crowe, and Aaron A. Smirl, by reading the within declaration and summons in their and each of their presence and hearing, at the county of Jefferson, May 20th, 1850; also on Austin M. Johnson, George Arnold, Lewis Bush, and Samuel T. Northcraft, by reading the within petition and summon in their presence and hearing in the county of Jefferson, May 21st, 1850; also on John C. Herrington by reading petition and summon in his presence and hearing at the county of Jefferson, May 23d, 1850; the within named John M. Gray, Silas Husky, James Burgess, jr., and George W. Ogden not found in my county.

G. J. JOHNSON,
Sheriff, Jefferson county, Mo.

Exhibit A.

This deed, made and entered into this twenty-sixth day of November, eighteen hundred and twelve, by and between Joseph Gerrard, of the county of Saint Genevieve, in Louisiana, of the one part, and Jeduthan Kendal, of the county of St. Louis, of the other part, witnesseth: That the said Joseph Gerrard, for and in consideration of the sum of four hundred dollars, to him in hand paid by the said Kendal, the receipt of which payment is hereby acknowledged, has granted, bargained, and sold, and does by these presents grant, bargain, sell, and assign, to the said Kendal, and his heirs and assigns forever, all the right, title, claim, and interest of, in, and to the following tract of land, which has or may be acquired hereafter by virtue of a settlement right made by John Gerrard, senior, to wit, which tract of land contains sixteen hundred arpens, or forty arpens square, be the same more or less, situate in the county of Saint Louis, on the west bank of the Mississippi, including the mouth of the Grand Glaize creek, south of the Merrimac river, adjoining to lands on the north and south claimed by the public, and other surveys on the west, &c. The said Joseph Gerrard claiming right to said tract of land as heir in chief to the estate of John Gerrard, deceased, does hereby warrant and defend against the claim or claims of all the said Gerrard family unto him, the said Kendal. To have and to hold the said land, with all the premises and appurtenances to the same in any wise belonging, be the same [more] or less, as the title thereof may be ratified to him, the said Kendall, and to his heirs and assigns forever.

In testimony whereof the said Joseph Gerrard has hereunto set his hand and seal, date above.

JOSEPH GERRARD. [SEAL.]

Signed in presents of—
JOHNSON CAMPBELL,
GEORGE MCGAHY.

STATE OF MISSOURI,
County of Jefferson, ss.

Be it remembered, that on this sixth day of May, in the year of our Lord one thousand eight hundred and thirty-three, personally appeared before me, the undersigned, a justice of the peace within and for said county, Joseph Gerrard, who is personally known to me to be the person whose name is subscribed to the within deed as grantor, as having executed the same, and acknowledged the same to be his act and deed, hand and seal, for the purposes therein mentioned. Taken and certified the day and year aforesaid.

CHANCERY SMITH,
Justice of the peace.

STATE OF MISSOURI,
County of Jefferson, sct.

I, Chancery Smith, clerk of the circuit court, and ex officio recorder of said county, do certify the within deed to be truly recorded in my office in record book C, page 354 and following.

Given under my hand and seal of office, at Herculaneum,
[L. S.] this 6th day of May, in the year eighteen hundred and thirty-three.

CHANC'Y SMITH, *Clerk.*

Endorsed—Filed for record this 6th day of May, 1833.
C. SMITH, *Recorder.*

Exhibit B.

Opinion of the recorder of land titles for Missouri Territory as to claims entered under act of 13th June, 1812, and proven before the first of January, 1814, as provided by the act of the 3d of March, 1813, comprehending also the claims in the late district of Arkansas, which, by act of 2d August, 1813, were permitted to be entered until 1st January, 1814, and proven 1st July, 1814; together with the extensions of quantity provided by the 4th section of the act of 3d March, 1813, and confirmations under the act of 12th April, 1814.

Warrant or ordering of survey.	Survey.	Notice to the recorder, by whom.	Quantity claimed, 1600 arpens.
		John Jarrott's reps.	

Where situate.	Possession, inhabitation, cultivation.	Opinions of the recorder.
Mouth of Grand Glaize creek, county of Saint Louis.	Possession, inhabitation and cultivation in 1781 and 8 following years, and again two or three years.	Not granted. Ep. 356 minutes, 145.

RECORDER'S OFFICE, ST. LOUIS, *6th May*, 1850.

I certify, that the above is correctly extracted from page 1 of book No. 1, and page 37 in book No. 2, being two of the five small books, with the following endorsement on the first, and also on the fifth book, believed to be in the proper handwriting of Frederick Bates, to wit: These five small books are originals in the proper handwriting of the undersigned, being his decisions on land claims since the adjournment of the late board. They were arranged and fairly transcribed for report to the Commissioner of the General Land Office, but not yet recorded in the books, because they have no authority till sanctioned by the Government.

St. Louis, November 1st, 1815.

FREDERICK BATES,
Recorder of land titles.

All on file in this office.

ADOLPHE RENARD,
U. S. recorder of land titles in the State of Missouri.

John Jarot's representatives to Frederick Bates, esquire, recorder of land claims in for and the Territory of Missouri.

☞ Please to take notice, that, under [the] right derived from the Spanish Government, and the provisions of the several laws of Congress, the legal representatives of John Jarrot claim title to forty arpens square, equal to sixteen arpens of land in the district of St. Louis, on the Mississippi river, including the mouth of the Grand Glaize creek; see book E, page 356, minutes of the recorder of land titles, acting as commissioner under the act of Congress, entitled "an act making further provisions for settling the claims to land in the Territory of Missouri," passed the 13th day of June, 1812, and other acts subsequently passed.

FREDERICK BATES,
Commissioner.

Bates's minutes, p. 1.

St. Louis, January 1st, 1814. E, 356, not granted. John Jarrot's legal representatives claiming 1600 *acres* arpens land, county St. Louis, mouth of Grand Glaize creek.

William Belen, being duly sworn, said, that John Jarrot lived on and cultivated this tract in 1780 or 1781, and eight following years; witness was then absent two years, and on his return found clm't Jarrot still inhabiting and cultivating, and continued to do so two or three years afterwards. Bates's minutes, pp. 144 and 145.

RECORDER'S OFFICE, *St. Louis, 6th May*, 1850.

I certify, that the above is, with the attached paper marked (A,) and certified by me on this day, a correct and complete transcript from the

books and records of this office of the claim of John Jarrot's representatives to sixteen hundred arpens of land.

ADOLPHE RENARD,
U. S. recorder of land titles for the State of Missouri.

This indenture, made and entered into this tenth day of May, in the year of our Lord eighteen hundred and thirty-seven, by and between Margaret Kendal, Alton J. Kendall, Olive Kendall, Keziah Kendal, and Berthial Kendal, the heirs and legal representatives of Jeduthan H. Kendal, deceased, of the first part, and Saunders Burgess of the second part, all of the State of Missouri, and county of Jefferson, witnesseth: That the said parties of the first part, for and in consideration of the sum of one hundred dollars, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part thereof forever exonerated, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and forever quit-claim, to the said party of the second part, all the right, title, claim and interest which they, the said party of the first part, have in and to the one equal undivided half part, except a part heretofore sold and conveyed to James Burgess, of a certain tract or parcel of land lying and being in the county of Jefferson, and State of Missouri, situate on the Mississippi river, including the mouth of Grand Glaize creek, containing six hundred and forty acres, be the same more or less, which said tract of land was purchased by the said Jeduthan Kendall in his lifetime of Joseph Gerrard, as the heir in chief of John Garrard, deceased, as will more fully appear by the [records in the] recorder's office at Herculaneum. To have and to hold the said tract or parcel of land aforesaid, together with all and singular the privileges thereunto belonging, or in anywise appertaining, to the said party of the second part, his heirs and assigns forever; and the said parties of the first part do hereby quitc laim, forever warrant, and defend the same from themselves and their heirs, to the said party of the second part, to his own proper use and behoof forever.

In testimony whereof the said parties of the first part have hereunto set their hands and affixed their seals, the date above written.

her
MARGARET X KENDALL, [SEAL.]
mark.
ALTON J. KENDAL, [SEAL.]
KEZIAH X KENDAL, [SEAL.]
OLIVE X KENDAL. [SEAL.]

Executed in presence of—
JOHN GEIGER,
WILLIAM BARTLETT.

STATE OF MISSOURI, *county of Jefferson, ss.*

Be it remembered, that on this tenth day of May, in the year one thousand eight hundred and thirty-seven, before the undersigned, one

of the justices of the peace, within and for the county aforesaid, personally appeared Margaret Kendal, Alton J. Kendal, Olive Kendal, and Kezia Kendal, all personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as having executed the same, and acknowledged the same their volunteer act and deed, hand and seal, for the purposes therein mentioned.

Taken and certified the day and year aforesaid, by me.

JOHN GEIGER, *Justice of the Peace.*

STATE OF MISSOURI, *county of Jefferson, ss.*

I, Henry P. Bates, recorder for the county aforesaid, do hereby certify, that the foregoing deed was filed for record on the 17th day of May, 1837, and that the same is recorded in book D, page 267 and following.

In testimony whereof I have hereunto set my hand and official seal the 23d day of June, 1837.

HENRY P. BATES, [L. S.]
Recorder.

Exhibit D.

This indenture, made and entered into this twelfth day of February, in the year of our Lord eighteen hundred and forty-seven, by and between Berthial Kendal, one of the heirs or legal representatives of Jeduthan Kendal, deceased, of the first part, and Sanders Burgess, of the second part, all of the State of Missouri, county of Jefferson, witnesseth:

That the said party of the first part, for and in consideration of the sum of five dollars, to her in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part thereof forever exonerated, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and forever quit claim, to the said party of the second part, all the right, title, claim, and interest which she, the said party of the first part, has in and to the one equal undivided half part, except a part heretofore sold and conveyed to James Burgess, of a certain tract or parcel of land, lying and being in the county of Jefferson, and State of Missouri, situate in the Mississippi river, including the mouth of Grand Glaize creek, containing six hundred and forty acres, be the same more or less; which said tract of land was purchased by the said Jeduthan H. Kendall, in his lifetime of Joseph Garrard, as the heir-in-chief of John Garrard, deceased, as will more fully appear by the records in the recorder's office at Hillsboro', Jefferson county, Missouri.

To have and to hold the said tract or parcel of land aforesaid, together with all and singular the privileges thereunto belonging, or in any wise appertaining, to the said party of the second part, his heirs and assigns, forever; and the said party of the first part does hereby quit claim and forever warrant and defend the same from herself and her heirs, to the said party of the second part, to his own proper use and behoof, forever.

In testimony whereof the said party of the first part has hereunto set her hand and affixed her seal, the date above written.

BERTHIA KENDAL. [SEAL.]

Executed in presence of—

———— ————.

STATE OF MISSOURI, *county of Jefferson, ss.*

Be it remembered, that on this twelfth day of February, in the year of our Lord one thousand eight hundred and forty-seven, personally appeared before the undersigned, a justice of the peace, within and for said county, the within named Berthial Kendal, personally known to me to be the person whose name is subscribed to the foregoing instrument of writing, as having executed the same, and acknowledged the same to be her act and deed, hand and seal, for the purposes therein mentioned.

Taken and certified the day and year above written.

B. JOHNSTON, *J. P.*

STATE OF MISSOURI, *county of Jefferson, ss.*

I, Johnson H. Alford, clerk of the circuit court and ex officio recorder in and for the county of Jefferson aforesaid, do certify, that the foregoing instrument in writing, purporting to be a deed from Berthia Kendal to Sanders Burgess, is a true copy from the record thereof, as the same remains of record in my office, in book H, pages 312 and following.

In testimony whereof I hereunto set my hand and affix the seal of said court, at office, in Hillsboro', this 15th day of February, A. D. 1847.

[L. S.]

JOHNSON H. ALFORD, *Clerk.*

Exhibit E.

Know all men by these presents, that I, Alton J. Kendal, of the *estate* of Missouri, and county of Jefferson, have, for and in consideration of the sum of fifty dollars, in property to me in hand paid by James Burgess, of the State and county aforesaid, sold, conveyed, and quit claimed, unto the said James Burgess, all the right, title, claim, and interest which I have or may hereafter have as one of the heirs of J. H. Kendal, deceased, in and to the following described tract or parcel of land, to wit:

Situate on the Mississippi, lying and being in the county aforesaid, commencing south of the Grand Glaize creek, at its mouth, running thence with said creek up to the mouth of the first big branch or hollow; thence with said branch to its source; thence a southwardly direction to lands formerly owned by Abner Vansant; thence with the line of said survey eastwardly to the Mississippi river; thence north with the river to the beginning.

To have and to hold the same, with all privileges thereunto belong-

ing; and it is expressly understood, that in case said land should not be confirmed to the heirs of J. H. Kendal, deceased, or if confirmed, shall not fall to my part on a division of said claim of land among the heirs aforesaid, then and in that case this instrument of writing is to be void, and said Burgess is not to have any recourse.

In testimony whereof I have hereunto set my hand the 9th day of May, 1836.

ALTON J. KENDAL.

STATE OF MISSOURI,
County of Jefferson, ss.

Be it remembered, that on this 24th day of August, in the year of our Lord one thousand eight hundred and thirty-six, before me, one of the justices of the peace within and for the county aforesaid, personally came Alton J. Kendal, personally known to me to be the same person whose name is subscribed to the within and foregoing instrument of writing, as having executed the same, and acknowledged the same to be his act and deed for the purposes therein mentioned.

Taken and certified the day and year above written.

B. JOHNSTON, Jr., *Justice peace.*

STATE OF MISSOURI,
Jefferson county, ss.

I, Henry P. Bates, recorder for the county aforesaid, do hereby certify, that the foregoing deed was filed for record on the 27th day of August, 1836, and that the same is recorded in book D, page 140.

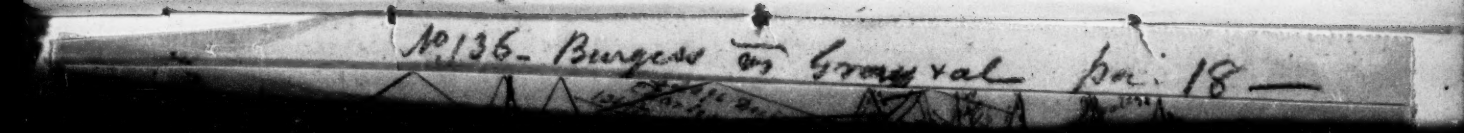
In testimony whereof I have hereunto set my hand this 5th day of October, 1836.

[L. S.]

HENRY P. BATES, *Recorder.*

Exhibit F.

Know all men by these presents, that James Burgess and Mary, his wife, of the State of Missouri, and county of Jefferson, have, for and in consideration of the sum of four hundred dollars, to them or one of them in hand paid by Sanders Burgess, of the same place, sold, conveyed, and quit claimed, unto the said Sanders Burgess, his heirs, &c., all the right, title, claim, and interest which I have or may hereafter have by virtue of a conveyance made by J. A. Kendal to myself, which said conveyance accompanies this deed, and will more fully explain, in and to the following described tract or parcel of land, situate on the Mississippi river, in the county aforesaid, commencing south of the Grand Glaize creek at its mouth, running thence with said creek up to the mouth of the first big branch or hollow; thence with said branch to its source; thence a southwardly direction to land formerly owned by Abner Vansant; thence with the line of said survey to the Mississippi river; thence north with the river to the beginning; reserving, however, so much of


№136- Burgess Gravel Bar. 18—

12-

said land as lies between the following points, commencing at the SE. corner of said claim, on the bank of the Mississippi river; thence north along the river bank to the mouth of the first ravine; thence west with said ravine, perhaps 5 rods, to a white oak 8 or 10 inches diameter; thence southwest to Vansant's line; thence east to the beginning, containing one and a half acres, more or less. To have and to hold the said described tract of land, with the appurtenances, to the said Sanders Burgess, his heirs, &c., to their own proper use and behoof.

In testimony whereof the party of the first part to these presents have set their hands and seals this 16th day of February, 1839.

JAMES BURGESS, [SEAL.]
her
MARY x BURGESS, [SEAL.]
mark.
Teste: B. JOHNSTON.

STATE OF MISSOURI,
County of Jefferson, ss.

Be it remembered that, on this 25th day of April, in the year 1839, before me, B. Johnston, a justice of the peace in and for the county aforesaid, personally came James Burgess and Mary, his wife, both personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and severally acknowledged the same to be their act and deed, hand and seal, for the purposes therein mentioned; the said Mary being by me first made acquainted with the contents thereof, and examined apart from her said husband, whether she executed the same freely, voluntarily, and without undue influence of her said husband, and relinquishes her dower to the lands therein described, declared that she executed the same voluntarily, freely, and without compulsion or undue influence of her said husband, and relinquishes her dower to the lands and tenements therein mentioned.

Taken and certified the day and year aforesaid.

B. JOHNSTON,
Justice, State of Missouri.

COUNTY OF JEFFERSON, *ss.*

John S. Mathews, clerk of the circuit court and ex officio recorder within and for said county, certify, that the foregoing instrument of writing was filed for record on the 26th day of October, 1839, and is truly recorded in book E, pages 171 and 172, of the land records of Jefferson county.

In testimony whereof I have hereunto set my hand and affixed my official seal at office, in Herculaneum, October 26th, 1839.

[L. S.] JOHN J. MATHEWS, *Recorder*

[For plat see original page 20.]

"The unconfirmed claim No. 3, John Jarrett's reps. 1,600 arpens, was laid down on this map, April 21st, 1821, by Wm. Milburn."

REGISTER'S OFFICE,
St. Louis, Missouri, April 17th, 1850.

The above diagram of John Jarrett's unconfirmed claim, and the marginal note, signed Wm. Milburn, is correctly copied from the plat book on file in this office, so far as to show the interferences in said claim of John Jarrett. ALTON LONG, *Register.*

Abstract of land sold at the land office at from the day of to the day of the same month inclusive.

When sold.	No. of receipt and certificate.	Name.	Residence.
1. December 30, 1847	16,570	Thomas Burgess, junior	Jefferson co., Mo.
2. January 19, 1848	16,607	Aaron N. Burgess.....	" "
3. March 16, 1848	16,779	Simeon Burgess.....	" "
4. May 22, 1848	16,889	John M. Gray.....	" "
5. June 10, 1848	16,935	James Burgess, junior..	" "
6. June 15, 1848	16,942	Samuel T. Northcut....	" "
7. June 24, 1848	16,959	Silas Husky.....	" "
8. June 27, 1848	16,968	Aaron A. Smirl.....	" "
9. June 27, 1848	16,972	George Arnold.....	" "
10. June 29, 1848	16,984	Austin M. Johnston....	" "
11. July 6, 1848	16,993	George W. Ogden.....	" "
12. April 21, 1849	17,445	John C. Harrington....	" "
13. February 2, 1850		Pierre Vasques, or legal representatives, surveyor general's certificate, No. 150.	

Part of section.	No. section.	Township.	Range.	Acres.	1-hundredths.		Purchase money.
1. W. frl. ½ N. of survey 2996.....	32	42	6	37	20	a $1 25	$46 50
2. SE. frl. ¼.....	20	42	6	110	51	1 25 P.	138 13
3. SE. frl. ¼.....	29	42	6	66	2	1 25	82 53
4. SW. frl. ½.....	29	42	6	77	55	1 25	96 96
5. S. frl. ½.....	32	42	6	156	16	1 25	195 20
6. SW. frl. ¼.....	20	42	6	129	26	1 25	161 57
7. NE. frl. ¼.....	29	42	6	100	9	1 25	125 11
8. NE. frl. ¼.....	19	42	6	85	19	1 25 P.	106 48
9. SW. ¼ of SW. ¼ sec. 18, and N. ½ NW. fr.....	19	46	6	88	39	.....	110 49
10. S. frl. part.....	18	46	6	52	73	.....	65 91
11. SE. frl. ¼.....	19	46	6	125	69	.....	157 11
12. NW. frl. ¼.....	30	46	6	50	85	.....	63 56
13. S. ½ NW. ¼ and SW. ¼.....	19	46	6	240	85		

REGISTER'S OFFICE,
St. Louis, Missouri, April 7, 1850.

The above extracts are correctly made from the register of sales of the tract book on file in this office.

ALTON LONG, *Register.*

TUESDAY, *May 28th*, 1850.

It appearing to the satisfaction of the court from the return of the sheriff on the summon issued against the defendants in this cause, that said defendants, John M. Gray, Silas Husky, and George W. Ogden cannot be found, and the court being satisfied that process cannot be served on them, it is ordered that said defendants be notified of the commencement of this suit by the publication in the Missouri Republican, a newspaper published in this State, of the following notice, to wit:

To John M. Gray, Silas Husky, and George W. Ogden.

You are hereby notified, that suit has been commenced against you by petition, in the circuit court within and for the county of Jefferson, in the State of Missouri, by Saunders Burgess, to recover from you and to compel you to abandon your claim to any part of six hundred and forty acres of land, being a part of a tract of land containing sixteen hundred arpens, including the mouth of Grand Glaize creek in said county of Jefferson, inhabited and cultivated by one John Jarrot, alias John Garrard, under the Spanish Government, and you are required to appear in said court at the next term thereof, to be begun and held at Hillsboro', on the fourth Monday of November next, and answer said petition, or the same will be taken as confessed.

And it is ordered by the court that an alias summon issue in this cause against James Burgess, jr.

Alias summon.

COUNTY OF JEFFERSON, *ss.*

The State of Missouri, to the sheriff of the county of Jefferson, greeting:

You are hereby commanded, as before you were commanded, that you summon James Burgess, junior, if he be found in your bailiwick, that he be and appear before the honorable judge of our circuit court, on the first day of the next term thereof, to be begun and held at the town of Hillsboro', within and for said county of Jefferson, on the fourth Monday of November next, then and there to answer unto Saunders Burgess, upon his original petition, a copy whereof is hereto annexed, and have you then there this writ.

Witness Thomas C. Fletcher, clerk of our said circuit court, with the seal thereof hereto affixed, at [his] office in Hillsboro', this 24th day of August, A. D. 1850.

[SEAL.]

THO. C. FLETCHER, *Clerk.*

I executed the above writ on the 10th day of September, 1850, at the county of Jefferson, by reading the same and the petition hereto annexed, in the presence and hearing of James Burgess, junior.

Given under my hand this 12th Sept., 1850.

JAMES McCULLOCH, *Sheriff.*

Tuesday, December 3d, 1850.

Be it remembered, that on the trial of this cause the defendants, by their counsel, filed the following demurrers to the plaintiff's petition:

Demurrer.

Silas Husky, one of the defendants, comes and demurs to the petition of the plaintiff, because it does not state facts sufficient to constitute a cause of action; in this, the plaintiff has no title sufficient to maintain an action of ejectment. But the defendants, by plaintiff's own showing in the petition, have the legal title to the lands *and* controversy. The plaintiff has neither a confirmation for said tract of land, or other legal title to sustain an action.

J. A. BEAL, *for defendant.*

Filed November 26, 1850.

THO. C. FLETCHER, *Clerk.*

James G. Crowe, one of the defendants, demurs to the petition of the plaintiff, because it does not state facts sufficient to constitute a cause of action; in this, the plaintiff has not a better title than defendant, by virtue of an entry with the register and receiver of any land office in the United States, or with the Commissioner of the General Land Office thereof, or a pre-emption right under the laws of the United States, or a New Madrid location, or a confirmation made under the laws of the United States, or a French or Spanish grant, warrant, or order of survey, surveyed by proper authority, under the French or Spanish Government, and recorded according to the usages of the country, prior to the 11th day of March, 1804, or by any better title than defendant. For further cause of demurrer the defendant says that he is improperly joined in the suit with the other defendants; that his interest is distinct and separate, and from the petition he cannot be joined with the defendants in this suit.

J. A. BEAL, *for defendant.*

Filed, November 27th, 1850.

THO. C. FLETCHER, *Clerk.*

Demurrer of Husky.

The defendant demurs to the petition of the plaintiff, because it does not state facts sufficient to constitute a cause of action; in this, the plaintiff shows that he has no legal title to the land in controversy, but on the contrary the petition shows that he has no title, and that the title of the land is in the defendants, and that their title is the best. And for further cause of demurrer the defendant demurs because the court

has no jurisdiction of the defendant; in this, the petition of the plaintiff unites different defendants, whose interests are in no wise connected; and the defendants are each in possession of separate and distinct tracts of land, and in no wise connected. And for further cause of demurrer to the petition of plaintiff, defendant demurs thereto because there is a defect of parties defendants, in including as defendants the parties whose interests are separate. That there is no connexion between the defendant Husky and the other defendants, nor between the defendants or the tract of land on which each defendant resides, and is separate from that of the other; and therefore plaintiff cannot, by the laws of the State of Missouri, unite parties defendants together under the circumstances as detailed in the petition.

J. A. BEAL,
Att'y for Silas Husky

Endorsed—Filed November 27th, 1850.
THO. C. FLETCHER, *Clk.*

Whereupon this cause came on to be heard upon said demurrer, and the court, by his judgment, sustained the demurrers to plaintiff's petition as follows: "Now, at this day, comes the parties aforesaid, by their respective attorneys, and the demurrers aforesaid of said defendants to the petition of said plaintiff being seen, heard, and by the court fully understood, it is considered and adjudged by the court, that the petition aforesaid is insufficient in law, and that said plaintiff take nothing by his writ; and further, that said defendants recover of said plaintiff their costs herein expended."

To the judgment of said court, sustaining said demurrers to plaintiff's petition, plaintiff excepts, and prays that his bill of exceptions may be signed, sealed, &c.

JOHN H. STONE. [SEAL.]

Wednesday, December 4th, 1850.

Now, at this day, come said plaintiff, and prays an appeal from the judgment and decision of the court in this cause to the supreme court of the State of Missouri, and files here his bond, which is acknowledged before, and approved by, the court. Thereupon the court does grant the appeal as prayed, and order that the clerk make out and send up to the supreme court a complete copy of the record in this cause.

JEFFERSON COUNTY, *ss.*

I, Tho. C. Fletcher, clerk of the circuit court in and for said county, do certify, that the foregoing is a complete copy of the record of said court in the case of Sanders Burgess, plaintiff, against John M. Gray and others, defendants, as the same appears in my office.

In testimony whereof I hereto set my hand and affix the seal of said court, at [my] office in Hillsboro', Jan. 27th, 1851.

[SEAL.] THO. C. FLETCHER, *Clk.*

Continuance.

And furthermore, at the March term of said supreme court, in the year eighteen hundred and fifty-one, on the twentieth day of March aforesaid, this cause was continued till the next term of said court, to wit, to the October term in the year aforesaid.

And again, on the twenty-second day of March, at said March term, the following proceedings were had, to wit:

Appeal dismissed.

SANDERS BURGESS
vs.
JOHN M. GRAY et al.

Appeal from Jefferson circuit court.

The appellees, by their attorney, come and move the court to set aside the order of continuance made in this cause at the present term, which motion is by the court sustained, and the cause dismissed, the appellant having failed to assign errors, as by law required.

And again, on the second day of April, at said March term, the following proceedings were had, to wit:

Appeal restored.

SANDERS BURGESS
vs.
JOHN M. GRAY et al.

Appeal from Jefferson circuit court.

The appellant, by his attorney, comes and moves the court to set aside the order made at the present term to dismiss this cause, and the court having taken time to consider thereof, do order that said motion be sustained, and that the cause be again placed upon the docket.

And on the twenty-sixth day of April, at said March term, this cause was, by order of said supreme court, continued until the next term.

And again, on the twenty-first day of October, at the October term in the year aforesaid, an assignment of errors was filed herein, in words and figures as follows:

Assignment of errors.

SANDERS BURGESS, appellant,
vs.
JOHN M. GRAY, Silas Husky, et al., resp'nts. } District of St. Louis.

In the supreme court of the State of Missouri. October term, 1851.

Appeal from the Jefferson circuit court.

And now comes the said Sanders Burgess, appellant, by Hugh A.

Garland and John B. King, his attorneys, and says that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error, in this, to wit:

1st. That the circuit court below erred in sustaining any or all of said demurrers by his judgment to appellant's petition, filed by respondents in the circuit court below to appellant's petition.

2d. That the circuit court below erred in giving judgment for respondent or respondents in the circuit court below, by his judgment upon said demurrer, or any of said demurrers, filed by respondent, or any of said respondents, to appellant's petition.

3d. That the circuit court below erred in not giving judgment for appellant, and against respondent or respondents, upon the trial of demurrer or demurrers, filed by respondent or respondents to appellant's petition filed in this cause.

4th. That because it appears by said record, and the judical proceedings in this cause, that the circuit court below gave judgment for respondent, and all of said respondents, when, by the facts in the case exhibited by appellant's petition, and by the laws of the land, the said circuit court ought to have given judgment for appellant, against said respondent and all of said respondents, upon each and all of their demurrers filed in this cause, and against those respondents who filed no demurrer or demurrers, and failed to otherwise plead to said action, or make any defence whatsoever to said petition of appellant.

5th. And that because there are many other errors committed by the said circuit court below, and insufficiencies in the judgment he has given in this cause, against the appellant and in favor of the respondents, said appellant prays that said judgment, for the errors aforesaid, and for other errors in said record and proceedings, may by this honorable court be reversed, annulled, and for nought held; and that said appellant may be restored to all things and rights to his property, which he has lost by reason of said erroneous judgment, given against him by the said circuit court as aforesaid.

GARLAND & KING,
Attorneys for appellant.

And furthermore, on the twenty-second day of October, at said term, this cause was argued by the attorneys for the respective parties, and submitted to the court for a decision herein.

And on the sixth day of November, at said October term, this cause was decided by said court, and the opinion of the court herein delivered is in words and figures as follows:

Opinion of supreme court.

SANDERS BURGESS, plaintiff,
vs.
JOHN M. GRAY and others, defendants.

The petition alleges that John Jarrott, alias Gerrard, in 1780, with

the permission of the officers of the Spanish Government, settled upon a tract of land now in Jefferson county, and continued to inhabit and cultivate it until 1796, when he was driven off by the Indians. His son Joseph succeeded him in possession of the land, and he continued to reside upon and cultivate it until he sold it to one Kendall in the year 1812. Kendall filed a notice of his claim with the recorder of land titles, who considered and rejected it. The right of Kendall upon his death descended to his heirs, and that right is vested in the plaintiff by conveyances filed with the petition. The plaintiff since his purchase has always been in possession. The claim was laid down upon the map of the public lands in the register's office, as reserved to satisfy John Jarrott's legal representatives.

In 1847 pre-emptions were allowed to different persons for different parts of the tract, and they made their separate entries, each person purchasing for himself. These purchasers are the defendants, and the plaintiff alleges that they all had notice of his claim, and of the reservation of the land from sale.

The prayer of the petition is, that the defendants be compelled to abandon their illegal claim to the land.

The defendants demurred to the petition, and assigned as causes of the demurrer: 1, that the petition showed no right in the plaintiff to maintain his action; 2, that separate and distinct causes of action against different persons were joined in the petition.

The demurrers were sustained by the circuit court of Jefferson county, and the plaintiff has appealed to this court.

It is to be observed that the plaintiff shows no confirmation of his claim. The first and only assertion of it before any tribunal was its exhibition to the recorder of land titles by Kendall after his purchase in 1812. The recorder refused to recommend it for confirmation, and since that time it has been utterly neglected. It is true that the counsel now claim that it was confirmed by the 2d section of the act of the 3d March, 1807, 2 U. S. Statutes at Large, 440; but this is an entire misapprehension of the effect of that section. The words which declare that a certain class of claims "shall be confirmed" are only a direction to the board of commissioners to confirm the claims which may be brought within the class by evidence produced before them, and by no means import a present confirmation by the direct action of Congress upon the claims.

The plaintiff, then, is to be regarded as the holder of an unconfirmed claim to land which the defendants have purchased from the United States, and the question is presented by the demurrer whether such a title will authorize him to apply to a court for the relief he seeks.

The Supreme Court of the United States, in Le Bois vs. Brummell, 4 Howard, 462, and in Mevard vs. Massey, 8 Howard, 307, distinctly declares, that until an inchoate title, originating under the Spanish Government, has been confirmed, "it has no standing in a court of law or equity." This language was used in cases where the claimants had formal concessions from the lieutenant governor, and

will certainly apply with as great a force to a claim which rests upon a settlement made upon the domain by the permission [of] the Spanish officers.

The plaintiff, then, has no title which authorizes him to ask the relief prayed for in his petition. But he alleges that the land was by different acts of Congress reserved from sale in order to satisfy his claim, and therefore the purchases made by the defendants were void. Suppose it to be true that the reservation did exist, and that its effect would be to render the purchases void, still his position in court is not changed thereby. The reservation confers no title on him, and the nullity of purchases made by the defendants does not enhance the merits of his title. He is still without any title that we can enforce.

In the argument much reliance has been placed upon the case of Perry vs. O'Hanlon, 11 Mo. R., 588, as supporting the rights of the plaintiff to maintain this action. Perry owned a Spanish claim which, under the provisions of the laws of the United States, he relinquished and obtained thereby the right to purchase the land claimed. He made the purchase, and afterwards the Commissioner of the General Land Office directed the purchase to be vacated. The land was reserved from sale on account of Perry's claim, and that claim was by his relinquishment, under the act of Congress, changed into a right of preemption to the same land. O'Hanlon claimed by purchase while the reservation continued. This court decided that, nothwithstanding the action of the Commissioner of the General Land Office, Perry's title under his purchase was a valid subsisting title, sufficient to maintain his action of ejectment; and that the purchase under which O'Hanlon claimed, being made while such purchase was forbidden by law, was void. The obvious distinction between that case and the present is, that the plaintiff, Perry, was asserting a title which our laws recognise as a title under the United States, conferring a right to the immediate possession of the land; while the plaintiff in this case has no title that can be regarded in a court of justice.

If the plaintiff should obtain a confirmation of his claim, and should then find himself obstructed by void entries or void patents, he can come into court and dispute their validity; but in his present condition, coming as a plaintiff to complain that other persons hold certificates and patents for land to which he has now no title, he can have no relief.

The demurrers were properly sustained, and the other judges concurring, the judgment of the circuit court is affirmed.

H. B. GAMBLE.

Judgment.

It is therefore considered and adjudged by the court, that the judgment aforesaid, in form aforesaid, by the said circuit court rendered, be in all things affirmed, and stand in full force and effect; and it is further considered by the court, that said respondents recover against said appellant their costs and charges herein expended, and have thereof execution.

And furthermore, on the twenty second day of November, at said

October term, said appellant, by his attorney, filed a motion for a rehearing in this cause, which said motion is in the words and figures as follows:

Motion for rehearing.

In the supreme court, State of Missouri, October term, 1851.

SANDERS BURGESS
vs.
GRAY and others.

The plaintiff in this case moves this honorable supreme court by his counsel, John B. King and Hugh A. Garland, to grant him a rehearing in this cause for the following causes and reasons, to wit:

1st. Because the opinion given by this honorable court in this cause is contrary to law.

2d. Because the opinion given by this honorable court ought to have been given in favor of Burgess, the plaintiff in this cause, and against the defendants and the United States.

3d. Because the opinion given in this cause ought to be, that Burgers, the plaintiff, is entitled to a legal title for the land sued for in his petition as against the defendants and the United States.

4th. Because the judgment of this honorable court in this case, upon the petition of the plaintiff, ought to be against the defendants to said petition and the United States, and in favor of the plaintiff.

5th. Because of the reasons assigned and set forth in the brief of argument of plaintiff's counsel for a rehearing in this cause, this honorable court ought to grant a rehearing in this cause, and then give a judgment for plaintiff against defendants and the United States, for a legal title to the land in said plaintiff's petition contained, sued for, and demanded, and set forth.

6th. Because of other and different errors contained in the opinion delivered by this honorable court upon the record and judicial proceedings of this cause, a rehearing ought to be granted to the plaintiff, that justice may be done him; that a different opinion and judgment might be rendered herein by this honorable court as against the defendants and the United States, than what has been delivered; that the opinion of the circuit court be reversed, and that the plaintiff have judgment for the legal title of said land sued for and set forth in his petition, by the judgment and decree of this honorable court, to whom in law, justice, and equity, it rightfully belongs.

Motion overruled.

And on the twenty-fourth day of December following, at the said October term of said court, the aforesaid motion for a rehearing in this cause was overruled by said court.

Affidavit of value of land.

THE STATE OF MISSOURI, *ss.*

Now at this day personally appeared before me the undersigned

clerk of the supreme court at St. Louis, John B. King, an attorney at law, and deposes and says, that he was at the institution of this suit, and now is, one of the attorneys of record in this cause, and that he is, and has been for many years, well acquainted with the tract of land now in dispute between *between* Sanders Burgess and John M. Gray and others, further specified in this transcript, and that he knows the same to be worth at least two thousand dollars.

JOHN B. KING, [L. S.]
Attorney of record.

Sworn to and subscribed before me, this twenty-eighth day of October, anno eighteen hundred and fifty-two.

WM. S. GLANVILLE,
Clerk of supreme court.

The citation is as follows:

Citation.

UNITED STATES OF AMERICA, *ss.*

To Thomas Burgess, jr., Aaron Burgess, John M. Gray, Simeon Burgess, James Burgess, jr., Samuel T. Northcut, alias Northcraft, Silas Husky, Aaron A. Smil, George Arnold, Austin M. Johnson, George W. Ogden, John C. Harrington, John Walton, Lewis Bush, and James G. Cromme, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein Saunders Burgess is plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Hamilton R. Gamble, chief justice of the supreme court of the State of Missouri, this 14th day of October, 1852.

H. R. GAMBLE,
Presiding judge of the supreme court of the State of Missouri.

Return on citation.

DISTRICT OF MISSOURI, *ss.*

Served the within citation upon James Burgess, jr., and Thomas Burgess, jr., on the twentieth day of October, 1852, between the hours of 6 and 9, p. m., by personally delivering to each of them a true copy of the same; also upon James G. Crowe, Austin M. Johnson, John Huck, George Arnold, Mrs. Benjamin O'Fallon, and Simeon Burgess, on the twenty-seventh day of October, between the hours of 8 a. m., and 2 p. m., by personally delivering to each of them a true copy of